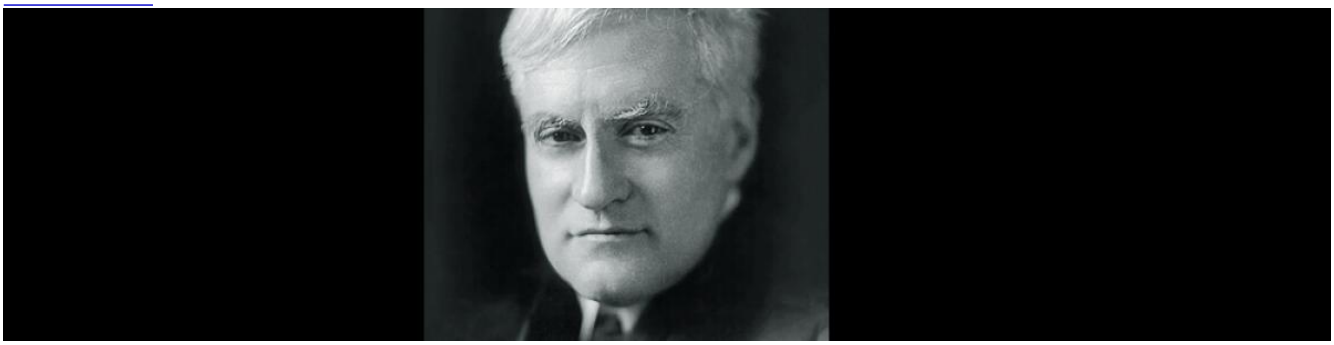
Remembering Justice Benjamin Nathan Cardozo

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Remembering Justice Benjamin Nathan Cardozo

by Rabbi Marc D. Angel

Benjamin Nathan Cardozo (1870-1938) was one of the greatest American jurists. During his distinguished career, he served as Chief Judge of the New York State Court of Appeals from 1926 until his appointment to the United States Supreme Court in 1932. He was known for his calm wisdom, personal dignity, and his commitment to social justice. His speeches and writings were characterized by clear thinking and graceful style.

Cardozo was born into a Sephardic Jewish family that had roots in America since Colonial days. Among his ancestors were those who fought in the American Revolution. His family was associated with Congregation Shearith Israel, the Spanish and Portuguese Synagogue of New York, founded in 1654; he retained his loyalty to Shearith Israel throughout his life, and was buried in the congregation's cemetery upon his death.

As a young attorney, recently graduated from the Law School of Columbia University, Cardozo had several interactions at Shearith Israel that reflected his generally traditional worldview. In 1895, as the congregation was planning to build a new synagogue building on Central Park West, a number of leading members were calling for reforms in the synagogue's customs. For centuries, Shearith Israel had followed the ancient traditions of Western Sephardim,

including the separation of men and women during prayer services. The reformers called for various changes, including a seating arrangement in the synagogue that allowed men and women to sit together. The congregation's religious leader, Dr. Henry Pereira Mendes, strongly opposed the reforms. Tensions within the congregation came to a head at a meeting of congregants on June 5, 1895. A number of reformers put forth their motion to institute changes; Dr. Mendes and another synagogue leader spoke in opposition to their motion. Then the 25 year old Cardozo made "a long address, impressive in ability and eloquence," in which he argued for the continuity of synagogue tradition. He pointed out that the congregation's constitution provided for separate seating of men and women, following in the traditional patterns of Spanish and Portuguese congregations. It would be unlawful to violate the constitution. Aside from the legal point, Cardozo stressed the importance of maintaining synagogue traditions that had been established and maintained by generations of congregants. Regardless of one's personal opinions or level of religious observance, the synagogue is a sacred space that should maintain its integrity. Following Cardozo's speech, a vote was taken: the motion to alter the synagogue customs was defeated by a vote of 73 to 7!

In 1898, Cardozo gave a talk at Shearith Israel on Benjamin Disraeli, late Prime Minister of the British Commonwealth. Disraeli was born into the Spanish and Portuguese Jewish community of London, but his father had his children baptized before Benjamin's Bar Mitzvah. So he was a Jew by birth and by public perception; but was a Christian by formal religious profession. In spite of facing ongoing anti-Semitism, Disraeli rose to the top of the British government, a highly regarded confidant of Queen Victoria.

The young Cardozo drew a thoughtful portrait of Disraeli's personal and political life. He could not help but recognize the phenomenal rise to power of a man who was constantly subjected to anti-Semitism in spite of his having been baptized. Although Disraeli presented himself as a Christian, he never flinched from pride in his Jewish background. He described Christianity as a fulfillment of Judaism. Cardozo noted that Disraeli's position was problematic: "So we find it to the last—the same union of loyalty to the race and disloyalty to the faith, the same impossible effort to reconcile the irreconcilable and to treat the religious tenets of his manhood as a development of the religion in whose shelter he had been born" (Disraeli, the Jew, Essays by Benjamin Cardozo and Emma Lazarus, ed. Michael Selzer, Selzer and Selzer, Great Barrington, Mass, 1993, p.49). Cardozo noted that Disraeli—in spite of his tremendous successes—was

ultimately a conflicted and lonely soul: “The nation marveled at his wit; it laughed at his sallies; it applauded his intrepid spirit; but all the time, it must have felt within its heart that he was a stranger within its gates.”

To his credit, Disraeli never apologized for or denied his Jewishness. Quite the contrary. He flaunted his Jewishness and presented the Jews and Judaism in positive lights. Cardozo offered an appreciation of Disraeli’s role vis a vis the Jewish people: “As we look back upon him now, we see, I think, that he affected us for good. He taught us to think worthily of ourselves—that indispensable condition, as men have often said, which must be satisfied before it can be hoped that we shall be thought worthily of by others. He was himself, before all the world, a living illustration of the powers that are in us, of our resources, of our intellect, of our vigor; of our enthusiasm, of our diplomacy; of our finesse. … He might have stood for many other and perhaps greater things; he might have aided us in many other ways; but these he did stand for an in these he did aid us; and if the aid might have been greater, it none the less was great. It is something to have contributed a little to rousing the self-consciousness of a race, in waking it to a sense of its own dignity, and in waking others to a sense of its latent powers. In these days of Zionism, in these days of Herzl and Nordau, let us remember that we are working upon soil which Disraeli and men like him have helped posterity to till. By his own personality, as well as by his words and deeds, he seemed to weave into the woof of English public life some portion of the Hebraic spirit; to Hebraize the mid of the Protestant and the Puritan; and even to revive in his own day some glimmer of those ancient glories which it was one of the functions of his life to illustrate to the world. For that service at least, let us honor him tonight” ((pp. 65-66).

In a series of lectures at Yale University in 1921, Cardozo reflected on the nature of the judicial process. “There is in each of us a stream of tendency, whether you choose to call it philosophy or note, which gives coherence and direction to thought and action. Judges cannot escape that current any more than other mortals. All their lives, forces which they do not recognize and cannot name, have been tugging at them—inherited instincts, traditional beliefs, acquired convictions; and the resultant is an outlook on life, a conception of social needs….We may try to see things as objectively as we please. None the less, we can never see them with any eyes except our own” (The Nature of the Judicial Process, Yale University Press, New Haven, 1921, p. 12).

Cardozo’s own “stream of tendency” included a deep respect for tradition…but a keen awareness of the forces for change. While he understood

that judges must not set aside existing rules at pleasure, he also criticized “the demon of formalism.” Judges must balance their decisions, taking into consideration the welfare of society. Cardozo drew on a Talmudic teaching that describes God as offering Himself a prayer: “Be it my will that my justice be ruled by my mercy.” He suggested that judges keep this prayer in mind during their own deliberations (pp. 66-67).

In a keenly self-revelatory comment, Cardozo reminisced on what he had learned from his experiences as a judge. “I was much troubled in spirit, in my first years upon the bench, to find how trackless was the ocean on which I had embarked. I sought for certainty. I was oppressed and disheartened when I found that the quest for it was futile.…As the years have gone by, and as I have reflected more and more upon the nature of the judicial process, I have become reconciled to the uncertainty, because I have grown to see it as inevitable” (p. 166).

In a subsequent series of lectures at Yale, Cardozo noted that “law must be stable, and yet it cannot stand still.…The victory is not for the partisans of an inflexible logic nor yet for the levelers of all rule and all precedent, but the victory is for those who shall know how to fuse these two tendencies together in adaptation to an end as yet imperfectly discerned” (The Growth of the Law,Yale University Press, New Haven, 1924, p. 143).

Cardozo appreciated the need for balancing various tendencies—the faithfulness to precedents and the drive for change. It is not a simple matter to judge fairly and correctly. “In our worship of certainty, we must distinguish between the sound certainty and the sham, between what is gold and what is tinsel; and then, when certainty is attained, we must remember that it is not the only good; that we can buy it at too high a price; that there is a danger in perpetual quiescence as well as in perpetual motion; and that a compromise must be found in a principle of growth” (pp. 16-17).

Cardozo’s vast erudition was accompanied with a profound sense of social responsibility, his own personal dignity, and a calm wisdom. He was serenely confident and competent; and at the same time, he was genuinely humble and self-reflective.

He was a proud Jew. He was moderately observant of religious rituals, although not strictly so. He expressed his views on religion on various occasions. In 1927, he spoke at a dinner in honor of the 75th birthday of his rabbi at Shearith Israel, Dr. H. P. Mendes. In praising Dr. Mendes, he underscored the values of

doing justice, loving mercy and walking humbly with the Lord. That same year, Cardozo spoke at a dinner in honor of his friend, Rabbi Stephen Wise. He again stressed the role of religion as an agent of social justice. “Religion is worthless if it is not translated into conduct. Creeds are snares and hypocrisies if they are not adapted to the needs of life….Has there been some social wrong, some oppression of the people, some grinding of the poor? That is a matter for religion. Has there been cruelty to Jews abroad or to colored men at home?....That is a matter for religion. Has the sacred name of liberty, which should stand for equal opportunity for all, been made a pretext and a cover for special privileges for a few? That is a matter for religion. (quoted in Andrew L. Kaufman, Cardozo, Harvard University Press, Cambridge, 1998, p. 190).

But religion was more than social justice. At its best, religion must be marked by a selfless idealism and commitment to transcendent ideas. In 1931, Cardozo gave the commencement address at the Jewish Institute of Religion, and referred to Tycho Brahe, the 16th century Danish astronomer, who devoted long years to mark and register the stars, when people mocked him for this seemingly useless endeavor. “The submergence of self in the pursuit of an ideal, the readiness to spend oneself without measure, prodigally, almost ecstatically, for something intuitively apprehended as great and noble, spend oneself one knows not why—some of us like to believe that is what religion means” (Kaufman, p. 190).

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When I began serving Congregation Shearith Israel in 1969, and for many years thereafter, the rabbis’ gowning room was the old office of the late Rabbi Dr. David de Sola Pool. Several photographs hung on the walls, including one of Justice Benjamin Nathan Cardozo which he presented to the Congregation in 1932 upon being appointed to the United States Supreme Court. He inscribed it: “To the historic Congregation Shearith Israel in the City of New York, with the affectionate greetings of its member.”

Thus, every morning and evening before synagogue services, I was greeted by the handsome visage of Justice Cardozo. Although he died before I was even born, so that I did not know him personally, I somehow felt a friendship and kinship with him. He was, for me, an entry way into the past of my congregation and community. His photograph conveyed the confidence and the judgment, challenging us to be faithful to the past and yet open to the needs of

the present…and future.

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